

H. B. 4480

(By Delegates Morgan, Miley and Poore)
[Introduced February 9, 2012; referred to the
Committee on the Judiciary then Finance.]

A BILL to repeal §3-3-3a of the Code of West Virginia , 1931, as amended; and to amend and reenact §3-3-1, 3-3-2, §3-3-2b, §3-3-3, §3-3-4, §3-3-5, §3-3-5a, §3-3-5b, §3-3-5c and §3-3-6 of said code, all relating to voting; removing restrictions on absentee voting; providing for early in-person voting; providing for electronic applications for registration and ballots; waiving requirements for witnesses when ballot is electronic; clarifying eligibility requirements to register and to vote; revising provisions to comply with federal election law; and clarifying procedures for assistance in voting.

Be it enacted by the Legislature of West Virginia:

That §3-3-3a of the Code of West Virginia, 1931, as amended, be repealed; and that §3-3-1, 3-3-2, §3-3-2b, §3-3-3, §3-3-4, §3-3-5, §3-3-5a, §3-3-5b, §3-3-5c and §3-3-6 of said code be amended and reenacted, all to read as follows:

ARTICLE 3. VOTING BY ABSENTEES.

1 **§3-3-1. Persons eligible to vote absentee ballots.**

2 (a) All registered ~~and other qualified~~ voters of the county
3 may vote an absentee ballot during the period of early voting in
4 person.

5 (b) Registered voters ~~and other qualified voters~~ in the county
6 are authorized to vote an absentee ballot by mail. ~~in the following~~
7 ~~circumstances:~~

8 ~~(1) Any voter who is confined to a specific location and~~
9 ~~prevented from voting in person throughout the period of voting in~~
10 ~~person because of:~~

11 ~~(A) Illness, injury or other medical reason;~~

12 ~~(B) Physical disability or immobility due to extreme advanced~~
13 ~~age; or~~

14 ~~(C) Incarceration or home detention: *Provided,* That the~~
15 ~~underlying conviction is not for a crime which is a felony or a~~
16 ~~violation of section twelve, thirteen or sixteen, article nine of~~
17 ~~this chapter involving bribery in an election;~~

18 ~~(2) Any voter who is absent from the county throughout the~~
19 ~~period and available hours for voting in person because of:~~

20 ~~(A) Personal or business travel;~~

21 ~~(B) Attendance at a college, university or other place of~~
22 ~~education or training; or~~

23 ~~(C) Employment which because of hours worked and distance from~~
24 ~~the county seat make voting in person impossible;~~

25 ~~(3) (c) Any voter absent from the county throughout the period~~
26 ~~and available hours for voting in person and who is an absent~~

1 uniformed services voter or overseas voter, as defined by 42 U.S.C.
2 §1973, *et seq.*, the Uniformed and Overseas Citizens Absentee Voting
3 Act of 1986, including members of the uniformed services on active
4 duty, members of the merchant marine, spouses and dependents of
5 those members on active duty and persons who reside outside the
6 United States and are qualified to vote in the last place in which
7 the person was domiciled before leaving the United States may vote
8 an absentee ballot by mail.

9 ~~(4) Any voter who is required to dwell temporarily outside the~~
10 ~~county and is absent from the county throughout the time for voting~~
11 ~~in person because of:~~

12 ~~(A) Serving as an elected or appointed federal or state~~
13 ~~officer; or~~

14 ~~(B) Serving in any other documented employment assignment of~~
15 ~~specific duration of four years or less; and~~

16 ~~(5) Any voter for whom the designated area for absentee voting~~
17 ~~within the county courthouse or annex of the courthouse and the~~
18 ~~voter's assigned polling place are inaccessible because of his or~~
19 ~~her physical disability.~~

20 ~~(c)~~ (d) Registered voters and other qualified voters in the
21 county may, in the following circumstances, vote an emergency
22 absentee ballot, subject to the availability of the services as
23 provided in this article:

24 (1) Any voter who is confined or expects to be confined in a
25 hospital or other duly licensed health care facility within the
26 county of residence or other authorized area, as provided in this

1 article, on the day of the election;

2 (2) Any voter who resides in a nursing home within the county
3 of residence and would be otherwise unable to vote in person,
4 providing the county commission has authorized the services if the
5 voter has resided in the nursing home for a period of less than
6 thirty days; and

7 (3) Any voter who is working as a replacement poll worker and
8 is assigned to a precinct out of his or her voting district, if the
9 assignment was made after the period for voting an absentee ballot
10 in person has expired.

11 **§3-3-2. Authority to conduct absentee voting; absentee voting**
12 **application; form.**

13 (a) Absentee voting is to be supervised and conducted by the
14 proper official for the political division in which the election is
15 held, in conjunction with the ballot commissioners appointed from
16 each political party, as follows:

17 (1) For any election held throughout the county, within a
18 political subdivision or territory other than a municipality, or
19 within a municipality when the municipal election is conducted in
20 conjunction with a county election, the clerk of the county
21 commission; or

22 (2) The municipal recorder or other officer authorized by
23 charter or ordinance provisions to conduct absentee voting, for any
24 election held entirely within the municipality, or in the case of
25 annexation elections, within the area affected. The terms "clerk"
26 or "clerk of the county commission" or "official designated to

1 supervise and conduct absentee voting" used elsewhere in this
2 article means municipal recorder or other officer in the case of
3 municipal elections.

4 (b) A person authorized and desiring to vote a mail-in
5 absentee ballot in any primary, general or special election is to
6 make application in writing in the proper form to the proper
7 official as follows:

8 (1) The completed application is to be on a form prescribed by
9 the Secretary of State and is to contain the name, date of birth
10 and, in the case of a primary election, the political affiliation
11 of the voter, residence address within the county, the address to
12 which the ballot is to be mailed, ~~the authorized reason, if any,~~
13 ~~for which the absentee ballot is requested and, if the reason is~~
14 ~~illness or hospitalization, the name and telephone number of the~~
15 ~~attending physician,~~ the signature of the voter to a declaration
16 made under the penalties for false swearing as provided in section
17 three, article nine of this chapter that the statements and
18 declarations contained in the application are true, any additional
19 information which the voter is required to supply, and any
20 affidavit which may be required; ~~and an indication as to whether it~~
21 ~~is an application for voting in person or by mail; or~~

22 (2) For any person authorized to vote an absentee ballot under
23 the provisions of 42 U.S.C. §1973, et seq., the Uniformed and
24 Overseas Citizens Absentee Voting Act of 1986, the completed
25 application may be on the federal postcard application for absentee
26 ballot form issued under authority of that act, or on the federal

1 write-in absentee ballot, submitted by mail or electronically; or

2 (3) For any person unable to obtain the official form for
3 absentee balloting at a reasonable time before the deadline for an
4 application for an absentee ballot by mail is to be received by the
5 proper official, the completed application may be in a form set out
6 by the voter, provided all information required to meet the
7 provisions of this article is set forth and the application is
8 signed by the voter requesting the ballot.

9 **§3-3-2b. Special absentee voting list.**

10 (a) Any person who is registered and otherwise qualified to
11 vote and who is permanently and totally physically disabled and who
12 is unable to vote in person at the polls in an election may apply
13 to the official designated to supervise and conduct absentee voting
14 for placement on the special absentee voting list.

15 (b) The application is to be on a form prescribed by the
16 Secretary of State which is to include the voter's name and
17 signature, residence address, and a statement that the voter is
18 permanently and totally physically disabled. ~~and would be unable to~~
19 ~~vote in person at the polls in any election, a description of the~~
20 ~~nature of that disability, and a statement signed by a physician to~~
21 ~~that effect.~~

22 (c) Upon receipt of a properly completed application, the
23 official designated to supervise and conduct absentee voting shall
24 enter the name on the special absentee voting list, which is to be
25 maintained in a secure and permanent record. The person's name will
26 remain active on the list until: (1) The person requests in writing

1 that his or her name be removed; (2) the person removes his or her
2 residence from the county, is purged from the voter registration
3 books or otherwise becomes ineligible to vote; (3) a ballot mailed
4 to the address provided on the application is returned
5 undeliverable by the United States Postal Service; or (4) the death
6 of the person.

7 (d) The official designated to supervise and conduct absentee
8 voting shall mail an application for an absentee ballot by mail to
9 each person active on the special absentee voting list not later
10 than forty-six days before each election.

11 **§3-3-3. Early voting in person.**

12 (a) The voting period for early in-person voting is to be
13 conducted during regular business hours beginning on the thirteenth
14 day before the election and continuing through the third day before
15 the election. Additionally, early in-person voting is to be
16 available from 9:00 a.m. to 5:00 p.m. on Saturdays during the early
17 voting period.

18 (b) Any person desiring to vote during the period of early in-
19 person voting shall, upon entering the election room, clearly state
20 his or her name and residence to the official or representative
21 designated to supervise and conduct early in-person ~~absentee~~
22 voting. If that person is found to be duly registered as a voter in
23 the precinct of his or her residence, he or she is required to sign
24 his or her name in the space marked "signature of voter" on the
25 pollbook. If the voter is unable to sign his or her name due to
26 illiteracy or physical disability, the person assisting the voter

1 and witnessing the mark of the voter shall sign his or her name in
2 the space provided. No ballot may be given to the person until he
3 or she signs his or her name on the pollbook or the voter's mark is
4 duly witnessed.

5 (c) When the voter's signature or mark is properly on the
6 pollbook, two qualified representatives of the official designated
7 to supervise and conduct early in-person ~~absentee~~ voting shall sign
8 their names in the places indicated on the back of the official
9 ballot. However, if the ballot is provided to the voter
10 electronically, the requirement for the signature of two qualified
11 representatives is waived.

12 (d) If the official designated to supervise and conduct early
13 in-person ~~absentee~~ voting determines that the voter is not properly
14 registered in the precinct where he or she resides, the clerk or
15 his or her representative shall challenge the voter's absentee
16 ballot as provided in this article.

17 (e) The official designated to supervise and conduct early in-
18 person ~~absentee~~ voting shall provide each person voting an absentee
19 ballot in person the following items to be printed as prescribed by
20 the Secretary of State:

21 (1) In counties using paper ballots, one of each type of
22 official absentee ballot the voter is eligible to vote, prepared
23 according to law;

24 (2) In counties using punch card systems, one of each type of
25 official absentee ballot the voter is eligible to vote, prepared
26 according to law, and a gray secrecy envelope;

1 ~~(3)~~ In counties using optical scan systems, one of each type
2 of official absentee ballot the voter is eligible to vote, prepared
3 according to law, and a secrecy sleeve; or

4 ~~(4)~~ For direct recording election systems, access to the
5 voting equipment in the voting booth.

6 (f) The voter shall enter the voting booth alone and there
7 mark the ballot: *Provided*, That the voter may have assistance in
8 voting according to the provisions of section four of this article.
9 After the voter has voted the ballot or ballots, the absentee voter
10 shall: Place the ballot or ballots in the ~~gray~~ secrecy envelope and
11 return the ballot or ballots to the official designated to
12 supervise and conduct the early in-person ~~absentee~~ voting:
13 *Provided, however*, That in direct recording election systems, once
14 the voter has cast his or her ballot, the voter shall exit the
15 polling place.

16 (g) Upon receipt of the voted ballot, representatives of the
17 official designated to supervise and conduct the early in-person
18 ~~absentee~~ voting shall:

19 (1) Remove the ballot stub;

20 (2) Place ~~punch card ballots~~ and paper ballots into one
21 envelope which shall not have any marks except the precinct number
22 and seal the envelope; and

23 (3) Place ballots for all voting systems into a ballot box
24 that is secured by two locks with a key to one lock kept by the
25 president of the county commission and a key to the other lock kept
26 by the county clerk.

1 ~~§3-3-3a. Voting absent voter's ballot by personal appearance in~~
 2 ~~Saturday elections for religious reasons.~~

3 ~~(a) In addition to the persons declared eligible to vote~~
 4 ~~absent voters' ballots pursuant to the provisions of section one of~~
 5 ~~this article, duly registered and otherwise qualified voters who~~
 6 ~~are members of a religious denomination with an established history~~
 7 ~~of observing Saturday as the sabbath may vote absentee by personal~~
 8 ~~appearance in any election to be held on a Saturday.~~

9 ~~(b) Application for an absent voter's ballot authorized by the~~
 10 ~~provisions of this section shall be made on a form prescribed by~~
 11 ~~the secretary of state. The procedures for voting by personal~~
 12 ~~appearance set forth in section three of this article, to the~~
 13 ~~extent not in conflict with the provisions of this section, shall~~
 14 ~~otherwise govern the procedures herein.~~

15 **§3-3-4. Assistance to voter in voting an early in-person absent**
 16 **voter's ballot by personal appearance; penalties.**

17 (a) Any registered voter who requires assistance to vote by
 18 reason of blindness, disability, advanced age or inability to read
 19 and write may be given assistance by a person of the voter's
 20 choice: *Provided*, That the assistance may not be given by the
 21 voter's present or former employer or agent of that employer, by
 22 the officer or agent of a labor union of which the voter is a past
 23 or present member or by a candidate on the ballot.

24 (b) Any voter who requests assistance in voting an early in-
 25 person ~~absent~~ voter's ballot but who is determined by the official
 26 designated to supervise and conduct early in-person ~~absentee~~ voting

1 not to be qualified for assistance under the provisions of this
2 section and section thirty-four, article one of this chapter may
3 vote a challenged ~~absent voter's~~ early in-person ballot with the
4 assistance of any person authorized to render assistance pursuant
5 to this section. The official designated to supervise and conduct
6 early in-person ~~absentee~~ voting shall in this case challenge the
7 ~~absent~~ early in-person voter's ballot on the basis of his or her
8 determination that the voter is not qualified for assistance.

9 (c) Any one or more of the election commissioners or poll
10 clerks in the precinct to which an ~~absent~~ early in-person voter's
11 ballot has been sent may challenge the ballot on the ground that
12 the voter received assistance in voting it when in his or their
13 opinion: (1) The person who received the assistance in voting the
14 ~~absent~~ early in-person voter's ballot did not require assistance;
15 or (2) the person who provided the assistance in voting did not
16 make an affidavit as required by this section. The election
17 commissioner or poll clerk or commissioners or poll clerks making
18 a challenge shall enter the challenge and reason for the challenge
19 on the form and in the manner prescribed or authorized by this
20 article.

21 (d) Before entering the voting booth or compartment, the
22 person who intends to provide a voter assistance in voting shall
23 make an affidavit, the form of which is to be prescribed by the
24 Secretary of State, that he or she will not in any manner request
25 or seek to persuade or induce the voter to vote any particular
26 ticket or for any particular candidate or for or against any public

1 question and that he or she will not keep or make any memorandum,
2 image, recording, or entry of anything occurring within the voting
3 booth or compartment and that he or she will not, directly or
4 indirectly, reveal to any person the name of any candidate voted
5 for by the voter or which ticket he or she had voted or how he or
6 she had voted on any public question or anything occurring within
7 the voting booth or compartment or voting machine booth, except
8 when required pursuant to law to give testimony as to the matter in
9 a judicial proceeding.

10 (e) In accordance with instructions issued by the Secretary of
11 State, the official designated to supervise and conduct early in-
12 person ~~absentee~~ voting shall provide a form entitled "List of
13 Assisted Voters", prescribed by the Secretary of State, which list
14 is to be divided into two parts. Part A is to be entitled
15 "Unchallenged Assisted Voters" and Part B is to be entitled
16 "Challenged Assisted Voters". Under Part A, the official designated
17 to supervise and conduct early in-person ~~absentee~~ voting shall
18 enter the name of each voter receiving unchallenged assistance in
19 voting an ~~absent~~ early in-person voter's ballot, the address of the
20 voter assisted, ~~the nature of the disability which qualified the~~
21 ~~voter for assistance in voting an absent voter's ballot,~~ the name
22 of the person providing the voter with assistance in voting an
23 ~~absent~~ early in-person voter's ballot, the fact that the person
24 rendering the assistance in voting made and subscribed to the oath
25 required by this section and the signature of the official
26 designated to supervise and conduct ~~absentee~~ early in-person voting

1 certifying to the fact that he or she had determined that the voter
2 who received assistance in voting an ~~absent~~ early in-person voter's
3 ballot was qualified to receive the assistance under the provisions
4 of this section. Under Part B, the official designated to supervise
5 and conduct ~~absentee~~ early in-person voting shall enter the name of
6 each voter receiving challenged assistance in voting, the address
7 of the voter receiving challenged assistance, the reason for the
8 challenge and the name of the person providing the challenged voter
9 with assistance in voting. At the close of the period provided for
10 early in-person voting ~~an absent voter's ballot by personal~~
11 ~~appearance~~, the official designated to supervise and conduct early
12 in-person ~~absentee~~ voting shall make and subscribe to an oath on
13 the list that the list is correct in all particulars; if no voter
14 has been assisted in voting an early in-person ~~absent~~ voter's
15 ballot as provided in this section, the official designated to
16 supervise and conduct early in-person ~~absentee~~ voting shall make
17 and subscribe to an oath of that fact on the list. The "List of
18 Assisted Voters" is to be available for public inspection in the
19 office of the official designated to supervise and conduct early
20 in-person ~~absentee~~ voting during regular business hours throughout
21 the period provided for early in-person voting ~~an absent voter's~~
22 ~~ballot by personal appearance~~ and, unless otherwise directed by the
23 Secretary of State, or a court of competent jurisdiction, the
24 official shall ~~transmit~~ retain the list, together with the
25 affidavits, applications, ~~and absent~~ early in-person voters'
26 ballots, and other related records ~~to the precincts on election day~~

1 for a period of twenty-two months or, if under an order of the
 2 court, until their destruction or other disposition is authorized
 3 or directed by the court. During this retention period, the "List
 4 of Assisted Voters" shall remain available for public inspection.

5 ~~(f) Following the election, the affidavits required by this~~
 6 ~~section from persons providing assistance in voting, together with~~
 7 ~~the "List of Assisted Voters", are to be returned by the election~~
 8 ~~commissioners to the clerk of the county commission, along with the~~
 9 ~~election supplies, records and returns, who shall make the oaths~~
 10 ~~and list available for public inspection and who shall preserve the~~
 11 ~~oaths and list for twenty-two months or, if under order of the~~
 12 ~~court, until their destruction or other disposition is authorized~~
 13 ~~or directed by the court.~~

14 ~~(g)~~ (f) Any person making an affidavit required under the
 15 provisions of this section who:

16 (1) Knowingly swears falsely in the affidavit; ~~or any person~~
 17 ~~who~~

18 (2) Counsels, or ~~or~~ advises, aids, or abets another in the
 19 commission of false swearing under this section; or

20 (3) Who renders assistance in the voting of an early in-person
 21 ballot when not qualified or permitted under this section to
 22 provide assistance is guilty of a misdemeanor and, upon conviction
 23 thereof, shall be fined not more than \$1,000 or confined in ~~the~~
 24 ~~county or regional~~ jail for a period of not more than one year, or
 25 both fined and confined.

26 ~~(h) Any person who provides a voter assistance in voting an~~

~~1 absent voter's ballot in the office of the official designated to
2 supervise and conduct absentee voting who is not qualified or
3 permitted by this section to provide assistance is guilty of a
4 misdemeanor and, upon conviction thereof, shall be fined not more
5 than one thousand dollars or imprisoned in the county or regional
6 jail for a period of not more than one year, or both.~~

7 ~~(i) (g) Any official designated to supervise and conduct early
8 in-person ~~absentee~~ voting, election commissioner or poll clerk who
9 authorizes or allows a voter to receive or to have received
10 unchallenged assistance in voting an ~~absent~~ early in-person voter's
11 ballot when the voter is known to the official designated to
12 supervise and conduct ~~absentee~~ early in-person voting or election
13 commissioner or poll clerk not to be or have been authorized by the
14 provisions of this section to receive or to have received
15 assistance in voting is guilty of a misdemeanor and, upon
16 conviction thereof, shall be fined not more than \$1,000 or
17 ~~imprisoned~~ confined in the county or regional jail for a period of
18 not more than one year, or both fined and confined.~~

19 ~~(j) The term "physical disability" as used in this section
20 means blindness or a degree of blindness as will prevent the voter
21 from seeing the names on the ballot or amputation of both hands or
22 a disability of both hands that neither can be used to make cross
23 marks on the absent voter's ballot.~~

24 (h) "Physical Disability" or "Physically Disabled" means
25 blindness or a degree of blindness that effectively prevents a
26 person from seeing any form, posting, document, ballot or other

1 writing set forth in this chapter, whether presented on paper or
2 electronically; or any physical condition, whether chronic or
3 temporary, which results in substantial impairment of the person's
4 ability conduct any action prescribed in the chapter.

5 **§3-3-5. Voting an absentee ballot by mail or electronically;**
6 **penalties.**

7 (a) Upon ~~oral or written~~ request, the official designated to
8 supervise and conduct absentee voting shall provide to any voter of
9 the county, in person, by mail, or electronically the appropriate
10 application for voting absentee by mail as provided in this
11 article. The voter shall complete and sign the application in
12 writing ~~his or her own handwriting~~ or, if the voter is unable to
13 complete the application because of illiteracy or physical
14 disability, the person assisting the voter and witnessing the mark
15 of the voter shall sign his or her name in the space provided.

16 (b) Completed applications for voting an absentee ballot by
17 mail are to be accepted when received by the official designated to
18 supervise and conduct absentee voting in person, by mail, or
19 electronically within the following times:

20 (1) For persons eligible to vote an absentee ballot under the
21 provisions of subdivision (3), subsection (b), section one of this
22 article, relating to absent uniformed services and overseas voters,
23 not earlier than January 1 of an election year or eighty-four days
24 preceding the election, whichever is earlier, and not later than
25 the sixth day preceding the election, which application is to, upon
26 the voter's request, be accepted as an application for the ballots

1 for all elections in the calendar year; and

2 (2) For all other persons eligible to vote an absentee ballot
3 by mail, not earlier than eighty-four days preceding the election
4 and not later than the sixth day preceding the election.

5 (c) Upon acceptance of a completed application, the official
6 designated to supervise and conduct absentee voting shall determine
7 whether the following requirements have been met:

8 (1) The application has been completed as required by law;

9 (2) The applicant is duly registered to vote in the precinct
10 of his or her residence and, in a primary election, is qualified to
11 vote the ballot of the political party requested;

12 ~~(3) The applicant is authorized for the reasons given in the
13 application to vote an absentee ballot by mail;~~

14 ~~(4) The address to which the ballot is to be mailed is an
15 address outside the county if the voter is applying to vote by mail
16 under the provisions of paragraph (A) or (B), subdivision (2),
17 subsection (b), section one of this article; or subdivision (3) or
18 (4) of said subsection;~~

19 ~~(5)~~ (3) The applicant is not making his or her first vote
20 after having registered by ~~postcard registration mail~~ or, if the
21 applicant is making his or her first vote after having registered
22 by ~~postcard registration mail~~, the applicant is exempt from these
23 requirements due to physical disability, attendance at an
24 educational institution outside of the state or as a voter covered
25 by the Uniformed and Overseas Citizen Absentee Voting Act, 42 U. S.
26 C. 1973ff; and

1 ~~(6) No regular and repeated pattern of applications for an~~
2 ~~absentee ballot by mail for the reason of being out of the county~~
3 ~~during the entire period of voting in person exists to suggest that~~
4 ~~the applicant is no longer a resident of the county.~~

5 (d) If the official designated to supervise and conduct
6 absentee voting determines that the required conditions have been
7 met, two representatives that are registered to vote with different
8 political party affiliations or designations shall sign their names
9 in the places indicated on the back of the official ballot, unless
10 the ballot is to be provided electronically. If the official
11 designated to supervise and conduct absentee voting determines the
12 required conditions have not been met, or has evidence that any of
13 the information contained in the application is not true, the
14 official shall give notice to the voter that the voter's absentee
15 ballot will be challenged as provided in this article and shall
16 enter that challenge.

17 (e) (1) Within one day after the official designated to
18 supervise and conduct absentee voting has both the completed
19 application and the ballot, the official shall mail, or where
20 authorized, electronically transmit, to the voter at the address
21 given on the application the following items as required and as
22 prescribed by the Secretary of State:

23 (A) One of each type of official absentee ballot the voter is
24 eligible to vote, prepared according to law;

25 (B) One envelope, unsealed, which may have no marks except the
26 designation "Absent Voter's Ballot Envelope No. 1" and printed

1 instructions to the voter;

2 (C) One postage paid envelope, unsealed, designated "Absent
3 Voter's Ballot Envelope No. 2";

4 (D) Instructions for voting absentee; ~~by mail;~~

5 ~~(E) For electronic systems, a device for marking by
6 electronically sensible pen or ink, as may be appropriate;~~

7 ~~(F)~~ (E) Notice that a list of write-in candidates is available
8 upon request; and

9 ~~(G)~~ (F) Any other notice or supplies required for voting in
10 the particular voting system.

11 (2) If the voter is an absent uniformed services voter or
12 overseas voter, as defined by 42 U.S.C. §1973, *et seq.*, the
13 official designated to supervise and conduct absentee voting shall
14 transmit the ballot to the voter via mail, or electronically as
15 requested by the voter. If the voter does not designate a
16 preference for transmittal, the clerk may select either method of
17 transmittal for the ballot. If the ballot is transmitted
18 electronically pursuant to this subdivision, the official
19 designated to supervise and conduct absentee voting shall also
20 transmit electronically:

21 (A) A waiver of privacy form, to be promulgated by the
22 Secretary of State;

23 (B) Instructions for voting absentee utilizing a ~~federally~~
24 state approved system for voting by mail or electronically;

25 (C) Notice that a list of write-in candidates is available
26 upon request; and

1 (D) Statement ~~of~~ for the voter to ~~affirming~~ affirm the voter's
2 current name and address and whether or not he or she received
3 assistance in voting.

4 (f) The voter shall mark the ballot alone: *Provided*, That the
5 voter may have assistance in voting according to the provisions of
6 section six of this article.

7 (1) After the voter has voted the ballot or ballots to be
8 returned by mail, the voter shall:

9 (A) Place the ballot or ballots in envelope no. 1 and seal
10 that envelope;

11 (B) Place the sealed envelope no. 1 in envelope no. 2 and seal
12 that envelope;

13 (C) Complete and sign the forms on envelope no. 2; and

14 (D) Return that envelope to the official designated to
15 supervise and conduct absentee voting.

16 (2) If the ballot was transmitted electronically as provided
17 in subdivision (2), subsection (e) of this section, the voter shall
18 return the ballot ~~in the same manner the ballot was received, or~~
19 ~~the voter may return the ballot by United States mail~~
20 electronically, along with a signed privacy waiver form. ~~or by~~
21 ~~mail.~~

22 (g) Except as provided in subsection (h) of this section,
23 absentee ballots returned by United States mail or other express
24 shipping service are to be accepted if:

25 (1) The ballot is received by the official designated to
26 supervise and conduct absentee voting no later than the day after

1 the election; or

2 (2) The ballot bears a postmark of the United States Postal
3 Service dated no later than election day and the ballot is received
4 by the official designated to supervise and conduct absentee voting
5 no later than the hour at which the board of canvassers convenes to
6 begin the canvass.

7 (h) Absentee ballots received through the United States mail
8 from persons eligible to vote an absentee ballot under the
9 provisions of subdivision (3), subsection (b), section one of this
10 article, relating to uniform services and overseas voters, are to
11 be accepted if the ballot is received by the official designated to
12 supervise and conduct absentee voting no later than the hour at
13 which the board of canvassers convenes to begin the canvass.

14 (i) Voted ballots submitted electronically pursuant to
15 subdivision (2), subsection (f) of this section are to be accepted
16 if the ballot is received by the official designated to supervise
17 and conduct absentee voting no later than the close of polls on
18 election day. ~~Provided, That the Secretary of State's office shall~~
19 ~~enter into an agreement with the Federal Voting Assistance Program~~
20 ~~of the United States Department of Defense to transmit the ballots~~
21 ~~to the county clerks at a time when two individuals of opposite~~
22 ~~political parties are available to process the received ballots.~~

23 (j) Ballots received after the proper time which cannot be
24 accepted are to be placed unopened in an envelope marked for the
25 purpose and kept secure for twenty-two months following the
26 election, after which time they are to be destroyed without being

1 opened.

2 (k) Absentee ballots which are hand delivered are to be
3 accepted if they are received by the official designated to
4 supervise and conduct absentee voting no later than the day
5 preceding the election: *Provided*, That no person may hand deliver
6 more than two absentee ballots in any election and any person hand
7 delivering an absentee ballot is required to certify that he or she
8 has not examined or altered the ballot. Any person who makes a
9 false certification violates the provisions of article nine of this
10 chapter and is subject to those provisions.

11 (l) Upon receipt of the sealed envelope, the official
12 designated to supervise and conduct absentee voting shall:

13 (1) Enter onto the envelope any other required information;

14 (2) Enter the challenge, if any, to the ballot;

15 (3) Enter the required information into the permanent record
16 of persons applying for and voting an absentee ballot in person;
17 and

18 (4) Place the sealed envelope into a ballot box that is
19 secured by two locks with a key to one lock kept by the president
20 of the county commission and a key to the other lock kept by the
21 county clerk.

22 (m) Upon receipt of a ballot submitted electronically pursuant
23 to subdivision (2), subsection (f) of this section, the official
24 designated to supervise and conduct absentee voting shall place the
25 ballot in an envelope marked "Absentee by Electronic Means" with
26 the completed waiver: *Provided*, That no ballots are to be processed

1 without the presence of two individuals of opposite political
2 parties.

3 (n) All ballots received electronically prior to the close of
4 the polls on election day are to be tabulated in the manner
5 prescribed for tabulating absentee ballots submitted by mail to the
6 extent that those procedures are appropriate for the applicable
7 voting system. The clerk of the county commission shall keep a
8 record of absentee ballots sent and received electronically.

9 **§3-3-5a. Processing federal postcard applications.**

10 When a federal postcard registration and absentee ballot
11 request (FPCA), as defined in subdivision (2), subsection (b),
12 section two of this article, is received by the official designated
13 to supervise and conduct absentee voting, the official shall
14 examine the application and take the following steps:

15 (1) The official shall first enter the name of the applicant
16 in the permanent absentee voter's record for each election for
17 which a ballot is requested, make a photocopy of the application
18 for each election for which a ballot is requested and place the
19 separate copies in secure files to be maintained for use in the
20 various elections. Unless otherwise specified by the voter, the
21 submitted Federal Post Card Application shall serve as an absentee
22 ballot application for any federal, state or local election held
23 during the calendar year in which it was received. In order to
24 receive a primary election ballot, a voter applying for an absentee
25 ballot through a Federal Post Card Application must indicate his or
26 her party affiliation. If the voter is not affiliated with a

1 political party as defined in section eight, article one of this
2 chapter, in order to receive a political primary ballot the voter
3 must specifically request the ballot of a political party which has
4 elected to allow unaffiliated voters to participate in that party's
5 primary election.

6 (2) The official designated to supervise and conduct absentee
7 voting shall determine if the applicant is registered to vote at
8 the residence address listed in the voting residence section of the
9 application. If the applicant is not registered, or not registered
10 at the address given, the official shall deliver the original FPCA
11 to the clerk of the county commission for processing, and the clerk
12 of the county commission shall process the application as an
13 application for registration and, if the application is received
14 after the close of voter registration for the next succeeding
15 election, the official shall challenge the absentee ballot for that
16 election.

17 (3) Except as provided in subdivision (2) of this section, the
18 federal application for an absentee ballot received from a person
19 qualified to use the application as provided in section two of this
20 article is to be processed as all other applications and the ballot
21 or ballots for each election for which ballots are requested by the
22 applicant is to be ~~mailed~~ transmitted to the voter on the first day
23 on which both the application and the ballot are available.

24 **§3-3-5b. Procedures for voting a special write-in absentee ballot**
25 **by qualified persons.**

26 (a) Notwithstanding any other provisions of this chapter, a

1 person qualified to vote an absentee ballot in accordance with
2 subdivision (3), subsection ~~(d)~~ (b), section one of this article
3 may ~~apply~~ submit not earlier than the first day of ~~January~~ the
4 period for voting an absentee ballot by mail ~~of an~~ for any election
5 ~~year for a special~~ a federal write-in absentee ballot. ~~for a~~
6 ~~primary or general election, in conjunction with the application~~
7 ~~for a regular absentee ballot or ballots. If the application is~~
8 ~~received after the forty-ninth day preceding the election, The~~
9 official designated to supervise and conduct absentee voting shall
10 honor ~~only~~ the ~~application~~ ballot for local, state and federal
11 offices in general, special and primary elections.

12 (b) The application for a ~~special~~ federal write-in absentee
13 ballot may be made on the federal ~~postcard application~~ write-in
14 absentee ballot form, at the same time the federal write-in ballot
15 is submitted.

16 (c) In order to qualify for a ~~special~~ federal write-in
17 absentee ballot, the voter must state that he or she is unable to
18 vote by regular absentee ballot or in person due to requirements of
19 military service or due to living in isolated areas or extremely
20 remote areas of the world, or due to another circumstance which
21 would make standard absentee voting impracticable or impossible.
22 The federal write-in absentee ballot may be as a failsafe voting
23 mechanism for an otherwise qualified absentee voter who has not
24 timely received a previously requested absentee ballot. This
25 statement may be made on the federal postcard application or on a
26 form ~~prepared~~ approved by the secretary of state and ~~supplied and~~

1 ~~returned~~ submitted with the ~~special~~ federal write-in absentee
2 ballot.

3 (d) Upon ~~receipt of the application~~ request of a qualified
4 voter within the time required, the official designated to
5 supervise and conduct absentee voting shall ~~issue~~ provide the
6 ~~special~~ federal write-in absentee ballot which is to be the same
7 ballot issued under the provisions of 42 U.S.C. §1973, et seq., the
8 Uniformed and Overseas Citizens Absentee Voting Act of 1986 or
9 direct the voter to a location where the ballot may be obtained, as
10 appropriate. The ballot is to permit the elector to vote in a

11 primary election by indicating his or her political party
12 affiliation and the names of the specific candidates for each
13 office, and in a general election by writing in a party preference
14 for each office, the names of specific candidates for each office,
15 or the name of the person whom the voter prefers for each office.

16 (e) When a ~~special~~ federal write-in absentee ballot is
17 received by the official designated to supervise and conduct
18 absentee voting from a voter: (1) Who mailed the write-in ballot
19 from any location within the ~~United States~~ county of residence; (2)
20 who is not a qualified voter as in accordance with subdivision
21 three, subsection b, section one of this article did not apply for
22 a regular absentee ballot; or (3) who did not apply for a regular
23 absentee ballot by mail; ~~or (4) whose application for a regular~~
24 ~~absentee ballot by mail was received less than thirty days before~~
25 ~~the election,~~ the write-in ballot may not be counted.

26 (f) Any federal write-in absentee ballot must be received by

1 the official designated to supervise and conduct absentee voting
2 ~~prior to the close of the polls on election day or it may not be~~
3 ~~counted as provided in subsection (g), section five of this~~
4 ~~article.~~

5 **§3-3-5c. Procedures for voting an emergency absentee ballot by**
6 **qualified voters.**

7 (a) Notwithstanding any other provision of this chapter, a
8 person qualified to vote an emergency absentee ballot, as provided
9 in subsection (c), section one of this article may vote an
10 emergency absentee ballot under the procedures established in this
11 section. The county commission may adopt a policy extending the
12 emergency absentee voting procedures to: (1) Hospitals or other
13 duly licensed health care facilities within an adjacent county or
14 within thirty-five miles of the county seat; or (2) nursing homes
15 within the county: *Provided*, That the policy is to be adopted by
16 the county commission at least ninety days prior to the election
17 that will be affected and a copy of the policy is to be filed with
18 the Secretary of State.

19 (b) On or before the fifty-sixth day preceding the date on
20 which any election is to be held the official designated to
21 supervise and conduct absentee voting shall notify the county
22 commission of the number of sets of emergency absentee ballot
23 commissioners which he or she determines necessary to perform the
24 duties and functions pursuant to this section.

25 (c) A set of emergency absentee ballot commissioners at-large
26 shall consist of two persons with different political party

1 affiliations appointed by the county commission in accordance with
2 the procedure prescribed for the appointment of election
3 commissioners under the provisions of article one of this chapter.
4 Emergency absentee ballot commissioners have the same
5 qualifications and rights and take the same oath required under the
6 provisions of this chapter for commissioners of elections.
7 Emergency absentee ballot commissioners are to be compensated for
8 services and expenses in the same manner as commissioners of
9 election or poll clerks obtaining and delivering election supplies
10 under the provisions of section forty-four, article one of this
11 chapter.

12 (d) Upon request of the voter or a member of the voter's
13 immediate family or, when the county commission has adopted a
14 policy to provide emergency absentee voting services to nursing
15 home residents within the county, upon request of a staff member of
16 the nursing home, the official designated to supervise and conduct
17 absentee voting, upon receiving a proper request for voting an
18 emergency absentee ballot no earlier than the seventh day next
19 preceding the election and no later than noon of election day shall
20 supply to the emergency absentee ballot commissioners the
21 application for voting an emergency absentee ballot and the
22 balloting materials. The emergency absentee ballot application is
23 to be prescribed by the secretary of state and is to include the
24 name, residence address and political party affiliation of the
25 voter, and the date and location ~~and reason for~~ of the confinement.
26 ~~in the case of an emergency, and the name of the attending~~

1 ~~physician.~~

2 (e) The application for an emergency absentee ballot ~~is to~~
3 shall be signed by the person applying. If the person applying for
4 an emergency absentee ballot is unable to sign his or her
5 application because of illiteracy or physical disability, he or she
6 ~~is to~~ shall make his or her mark on the signature line provided for
7 an illiterate or disabled applicant, and the mark is to be
8 witnessed. The person assisting the voter and witnessing the mark
9 of the voter shall sign his or her name in the space provided.

10 (f) A declaration is to be completed and signed by each of the
11 emergency absentee ballot commissioners, stating their names, the
12 date on which they appeared at the place of confinement of the
13 person applying for an emergency absentee ballot and the
14 particulars of the confinement.

15 (g) At least one of the emergency absentee ballot
16 commissioners receiving the balloting materials shall sign a
17 receipt which is to be attached to the application form. Each of
18 the emergency absentee ballot commissioners shall deliver the
19 materials to the absent voter, await his or her completion of the
20 application and ballot and return the application and the ballot to
21 the official designated to supervise and conduct absentee voting.
22 Upon delivering the application and the voted ballot to the
23 official, the emergency absentee ballot commissioners shall sign an
24 oath that no person other than the absent voter voted the ballot.
25 The application and the voted ballot are to be returned to the
26 official designated to supervise and conduct absentee voting prior

1 to the close of the polls on election day. Any ballots received by
2 the official after the time that delivery may reasonably be made
3 but before the closing of the polls are to be delivered to the
4 canvassing board along with the absentee ballots challenged in
5 accordance with the provisions of section ten of this article.

6 (h) Upon receiving the application and emergency absentee
7 ballot, the official designated to supervise and conduct absentee
8 voting shall ascertain whether the application is complete, whether
9 the voter appears to be eligible to vote an emergency absentee
10 ballot, and whether the voter is properly registered to vote with
11 the office of the clerk of the county commission. If the voter is
12 found to be properly registered in the precinct shown on the
13 application, the ballot is to be delivered to the precinct election
14 commissioner pursuant to section seven of this article. If the
15 voter is found not to be registered or is otherwise ineligible to
16 vote an emergency ballot, the ballot is to be challenged for the
17 appropriate reason provided for in section ten of this article.

18 (i) If either or both of the emergency absentee ballot
19 commissioners refuse to sign any application for voting an
20 emergency absentee ballot, the voter may vote as an emergency
21 absentee and the ballot will be challenged in accordance with the
22 provisions of section ten of this article, in addition to those
23 absentee ballots subject to challenge as provided in that section.

24 (j) Any voter who receives assistance in voting an emergency
25 absentee ballot shall comply with the provisions of section six of
26 this article. Any other provisions of this chapter relating to

1 absentee ballots not altered by the provisions of this section are
2 to govern the treatment of emergency absentee ballots.

3 **§3-3-6. Assistance to voter in voting an absent voter's ballot by**
4 **mail.**

5 (a) No voter ~~shall~~ may receive any assistance in voting an
6 absent voter's ballot by mail unless he or she ~~shall make~~ makes a
7 declaration at the time he or she makes application for an absent
8 voter's ballot that because of blindness, disability, advanced age
9 or inability to read or write he or she requires assistance in
10 voting an absent voter's ballot.

11 (b) Upon receipt of an absent voter's ballot by mail, the
12 voter who requires assistance in voting such ballot and who has
13 ~~indicated he or she requires such assistance and the reasons~~
14 therefor affirmed that he or she qualifies to receive assistance
15 for one of the qualifying reasons on the application may select any
16 eligible person to assist him or her in voting.

17 (c) The person providing assistance in voting an absent
18 voter's ballot by mail shall make an affidavit on a form as may be
19 prescribed by the Secretary of State, that he will not in any
20 manner request, or seek to persuade, or induce the voter to vote
21 any particular ticket or for any particular candidate or for or
22 against any public question, and that he will not keep or make any
23 memorandum or entry of anything occurring within the voting booth
24 or compartment, and that he will not, directly or indirectly,
25 reveal to any person the name of any candidate voted for by the
26 voter, or which ticket he had voted, or how he had voted on any

1 public question, or anything occurring within the voting booth or
2 compartment or voting machine booth, except when required pursuant
3 to law to give testimony as to such matter in a judicial
4 proceeding.

5 (d) The term "assistance in voting" as used in this section
6 shall mean assistance in physically marking the official absent
7 voter's ballot for a voter, or reading or directing the voter's
8 attention to any part of the official absent voter's ballot

NOTE: The purpose of this bill is to clarify eligibility requirements to register and to vote. It revises provisions to comply with federal election law and clarifies procedures for assistance in voting by eliminating noncompliance with federal law, removing restrictions on absentee ballots, removing obsolete code language and waiving requirements for witnesses when a ballot is electronic.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.